

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.2709 of 2016(O&M)
Date of Decision: 25.10.2018**

Ria Construction Ltd.

.....Petitioner

Versus

Datta Ram and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. B.S. Bedi, Advocate
for the petitioner.

Mr. Jagtar Kureel, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 05.12.2015 passed by Civil Judge (Senior Division), SAS Nagar Mohali, whereby application under Order 7 Rule 10 CPC filed by the defendant/petitioner was dismissed.

[2]. A civil suit for recovery was filed by the plaintiff/respondent in the Court of Civil Judge (Senior Division), SAS Nagar Mohali. Defendants were impleaded on the address of Panchkula. Para Nos.3 and 13 of the plaint read as under:-

“3. That for completing the entire painting work, rates were finalized between plaintiff and defendant and in this regard an agreement was also entered into between plaintiff and defendant on dated 27.07.2011 in which terms and conditions of the work were settled and the rate of labour was also settled. The agreement was signed by both the parties. Copy of the agreement dated 27.07.2011 is annexed herewith as Annexure P1.

13. That the cause of action has been arisen in favour of the plaintiff against the defendant firstly on 23.10.2013 when the painting work was completed by the plaintiff and thereafter on different intervals when the plaintiff visited the defendants office for getting the due amount released. The cause of action again arose on 15.10.2014 when the defendant sent false and baseless notice and refused to adhere to the legal demand of the plaintiff and cause of action is still continue one, as the defendant has not paid the due amount to the plaintiff till date. Hence the present suit is within the period of limitation.”

[3]. Evidently, agreement dated 27.07.2011 was admitted between the parties. As per para No.3 of the plaint, the plaintiff himself pleaded that the agreement was signed by both the parties. According to para No.13 of the plaint, the cause of action arose in favour of the plaintiff on 23.10.2013, when the painting work was completed by the plaintiff and thereafter on different dates, when the plaintiff visited the office of the defendants for getting his due money. Cause of action again

arose on 15.10.2014, when the defendant sent false and baseless notice and refused to accept the demand of the plaintiff.

[4]. At the time of issuance of notice of motion, following order was passed on 03.08.2016:-

“CM No.11640-CII of 2016

The application is allowed as prayed for.

Document (Annexure P-2) is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.2709 of 2016

Counsel for the petitioner inter alia contends that the trial Court dismissed the application filed under Section 8 of the Arbitration and Conciliation Act, 1996, primarily on the ground that Annexure P-1 is not signed by the plaintiff and there is no arbitration clause between the parties. It is argued that Annexure P-1 was appended along with the plaint by the respondent/plaintiff for seeking recovery of the dispute amount. It is further submitted that in the said document clause 10 provides for disputes regarding work, if any, is settled by corporate office of Ria Construction Ltd. at Panchkula and decision by CMD of petitioner would be binding on both the parties.

Notice of motion for 09.12.2016.

In the meanwhile, proceedings before the trial Court shall remain stayed.”

[5]. Clause 10 of the agreement reads as under:-

“10. Disputes regarding work if any will be settled at corporate office of Ria Construction Ltd. at Panchkula & decision by CMD of Ria Construction Ltd. will be binding on both the parties. Further, any legal dispute shall be subjected to the Courts of Panchkula.”

[6]. Perusal of the aforesaid clause would show that dispute in respect of work (if any) shall be settled at corporate office of the defendant in Panchkula and the decision given by CMD of the defendant office will be binding on both the parties. The legal dispute was subject to the jurisdiction of the Court at Panchkula. The subject matter of the suit is in respect of recovery of dues from the defendant. According to Section 20 CPC, the suit is required to be instituted, where defendant(s) reside(s) or cause of action arises, every suit shall be instituted in a Court within the local limits of whose jurisdiction, the defendant(s) at the time of commencement of suit actually and voluntarily reside(s) or carry(s) on business or personally work (s) for gain. The cause of action is dependent upon bundle of facts. Once the cause of action starts running, it will not stop on account of subsequent events.

[7]. Learned counsel for respondent No.1 submitted that the agreement was not signed by the respondent. The aforesaid statement is contrary to the recital made in para No.3 of the plaint.

[8]. In view of aforesaid, I am of the view that the plaint has to be submitted before the proper Court. Order 7 Rule 10 CPC mandates that at any stage of the suit, plaint can be returned to be presented to the Court in which it should have been instituted. On returning the plaint, the Judge shall endorse thereon the date of its presentation or return, the name of the party presenting it or a brief statement of the reasons for returning the same. The Court has to fix a date of appearance in the Court where the plaint is to be filed after its return as per requirement of Order 7 Rule 10-A CPC. The suit is at the stage of leading plaintiff evidence and the case is fixed for cross examination of plaintiff witness. In view of above, plaint is required to be returned to the plaintiff for its presentation before the competent Court at Panchkula.

[9]. In view of aforesaid position, the impugned order dated 05.12.2015 passed by Civil Judge (Senior Division), SAS Nagar Mohali is set aside. Application under Order 7 Rule 10 CPC is allowed. Accordingly, present revision petition is accepted. Plaint is directed to be returned to the plaintiff for its presentation before the competent Court at Panchkula. Both the parties shall appear before the Court at Panchkula on 22.11.2018, where the plaint shall be instituted in accordance with law. On its receipt, the Court shall proceed as a transferee Court from the stage at

which the case is fixed for further proceedings.

October 25, 2018	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No